

1 JEFFREY S. SIKTOLA
2 Attorney at Law
3 460 East Fry Boulevard
4 Sierra Vista, AZ 85635
5 (520) 452-0197

6 Attorney for Michelle Gutierrez
7 State Bar No. 011717

FEB 25 PM 1:36

COURT
ju

8 IN THE SUPERIOR COURT OF STATE OF ARIZONA
9 IN AND FOR COUNTY OF COCHISE

10 STATE OF ARIZONA,

11 Plaintiff,

12 -vs-

13 MICHELLE GUTIERREZ,

14 Defendant.

) Case No. CR-98-000549

) MOTION TO RECONSIDER DENIAL
) OF MOTION FOR REDETERMINATION
) OF PROBABLE CAUSE

) (Assigned: Hon. Matthew Borowiec,
) Division One)

15 MICHELLE GUTIERREZ, through undersigned counsel, respectfully moves the Court
16 to reconsider its denial of motions for redetermination of probable cause, before an untainted,
17 neutral and detached judge or magistrate or, in the alternative, different grand jury panel,
18 based upon following:

19 1. On Thursday, February 25, 1999, Mary Ellen Corbett, publisher of Bisbee News
20 attached editorial comment on this criminal case (true and correct copy of which is attached in
21 its one (1) page as Defendant's Exhibit "A.")

22 2. The published commentary contains serious, new allegations that member of the former
23 grand jury panel that returned indictments against Mr. Packer; Mr. and Mrs. Damiano; and
24 Mrs. Gutierrez, both during grand jury presentation and afterwards, committed juror misconduct
25 by violating rules of conduct.

26 3. The Court take appropriate action, at least to extent of reconsidering denial of motions
27 for redetermination of probable cause based upon grand juror misconduct, and grant the requested
28 remedy of redetermination of probable cause by judge or neutral and detached magistrate, free
from other extraneous or outside influences.

4. Miss Gutierrez's due process right to determination of probable cause based upon
proper instructions and definitions of applicable law, and upon admissible evidence presented in court

1 of law, and in proceeding free from misconduct by participants (due process of law), was violated
2 by juror misconduct in this particular case.

3 RESPECTFULLY SUBMITTED this 24 day of February 1999.

4 
5 JEFFREY S. SIRTOLA
6 Attorney for Michelle Gutierrez

7 Copies of foregoing delivered/
8 mailed this ____ day of February
9 1999 to:

10 Hon. Matthew Borowiec
11 Cochise County Superior Court
12 Division One
13 Bisbee, AZ 85603

14 Ivan Abrams, Esq.
15 606 South Highway 92
16 Bisbee, AZ 85603

17 Ruben Teran-Sonoqui
18 Attorney at Law
19 Douglas, AZ 85607

20 Sylvia Goodwin, Esq.
21 Asst. Attorney General
22 400 West Congress
23 Tucson, AZ 85701

24 Mary Ellen Corbett
25 Editor-Bisbee News
26 Bisbee, AZ 85603
27

EDITORIAL

Flawed system of 'justice'

By MARY ELLEN CORBETT

Without being so bold as to second-guess the professionals who run our courts, something seems clearly something amiss when I am telephoned at this paper by a Cochise County Grand Juror who expounds at length about details in a grand jury indictment, and who wants to regale a member of the press with her extremely negative opinions and experiences concerning a defendant. That juror, expressly forbidden to have such discussion, boldly accuses me of "covering up" the story because our news report was not voluminous and ran on Page 3 instead of Page 1.

- There is clearly something amiss when such a person, tightly bound by rules of absolute silence -- not only during the case but even after the grand jury is disbanded -- opts to castigate a defendant and that defendant's character to a member of the media.

- There is clearly something amiss when attorneys for defendants allege "tainting" of a grand jury via comments made by a grand juror excused from deliberations, who is said to have voiced -- in front of the entire grand jury -- her very strong disapproval of a person being considered in the indictment process.

- There seems something amiss when a news photographer is on the scene to take pictures of what is supposed to be a secret arrest. (We frequently see that word "secret" on court dockets and have been told nothing can be released until the arrest process is complete.)

- And there is clearly something amiss when there is discussion in the community about particulars of an arrest before that information should be known by anyone but grand jurors, and when the names of grand jurors have reportedly been leaked to the press, when their identities are supposedly kept secret to protect them from retaliation or pressure.

While we as professional journalists generally believe in the public's right to know and strict protection of confidential sources when such confidentiality is called for, we also understand there needs to be a careful balance between the public's right to know and the accused's rights to an unprejudiced hearing. The concept is known as the free press-fair trial dilemma.

It is our belief that the courts should determine who has compromised confidentiality in cases now in the limelight.

In order for any system of jurisprudence to be effective, it must carefully protect the rights of the accused. All citizens are entitled to presumption of innocence until proven guilty in a court of law.

The grand jury process in Cochise County appears to be seriously flawed. We urge those in charge to immediately launch an investigation to restore faith in and integrity to the system.